

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 ) Case Number  
vs. ) AU:23-CV-00853-DAE  
 )  
GREG ABBOTT, *in his capacity as* ) Austin, Texas  
Governor of the State of Texas, )  
and THE STATE OF TEXAS, )  
Defendants. ) January 19, 2024  
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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 reason I ruled the way I ruled is because I was compelled to by  
2 *Roe vs. Wade*, which the panel of the Fifth Circuit understood.  
3 Two years that sat there, then the Supreme Court -- two and a  
4 half years it sat up there, and the Supreme Court finally ruled  
5 that *Roe vs. Wade* -- vacated *Roe vs. Wade* and then that partial  
6 part of my case was dismissed, as it should have been. So I  
7 don't rule against the State of Texas or Governor Abbott  
8 because I have something against the State of Texas, quite the  
9 contrary. I look at things straight up the road, and I'm going  
10 to keep an absolutely open mind when I hear this trial, and I  
11 will decide it on whatever the evidence will be at the trial,  
12 not at the preliminary injunction hearing. We're not going to  
13 cobble in facts presented at the preliminary injunction  
14 hearing. If you have a witness you need to present, you better  
15 present them here. I don't care whether they were at the  
16 preliminary injunction hearing. This is not a preliminary  
17 injunction hearing, this is a trial on the merits. Okay?  
18 Everybody understand that?

19 MS. KIMBALL: Your Honor, we absolutely agree and  
20 agree with the expeditious timing of the trial. We do want to  
21 note, though, we plan to disclose experts and just wanted to  
22 make the Court aware of that.

23 THE COURT: That's why I'm giving you 30 days. If I  
24 had my druthers, I'd have the trial tomorrow, you know, because  
25 this is important. It's important for the people of Texas.

1 dismiss without prejudice on the basis that there is no way I  
2 can make a ruling on it on the facts of the matter today. The  
3 Treaty of Hidalgo was part of the argument that was previously  
4 made. This is not something new.

5 MR. WALTERS: Your Honor, that is a new claim and that  
6 would be a pure question of law. Our motion to dismiss says  
7 that the Treaty is not self-executing and that the United  
8 States does not have a cause of action to enforce it. It's not  
9 anything fact based in any way, so we think the Court could  
10 rule on that and at least narrow the issues for any trial. To  
11 have that just hanging out there when they've amended their  
12 complaint and we haven't had an opportunity to answer, we  
13 think --

14 THE COURT: I know what your answer is. It'll take  
15 you five minutes to answer this complaint. It's the same  
16 complaint except for the Treaty of Hidalgo.

17 MR. WALTERS: Well, Your Honor, our deadline to answer  
18 has not arisen and will not arise until after you rule on our  
19 motion to dismiss which has been fully briefed.

20 THE COURT: Well, all right. Here is what I will do.  
21 I will withdraw my denial of the motion to dismiss. I will  
22 make a -- I don't need any further argument on the Treaty of  
23 Hidalgo. That really has already been briefed. And have you  
24 submitted -- do we have all the papers on that? We do, don't  
25 we?

1 MS. KIMBALL: Yes, Your Honor, it's fully briefed.

2 THE COURT: All right. I'm going to decide that  
3 without further oral argument and I'll decide that promptly.  
4 And so we will go forward from there. Okay? So regardless of  
5 how I rule on that, we still have the other issue, so we still  
6 need the trial. Unless I grant the motion on the Treaty of  
7 Hidalgo, then that goes up on appeal. My concern is I don't  
8 want this thing bouncing back and forth to the Fifth Circuit on  
9 every issue with all kinds of unresolved issues. That's the  
10 concern I have.

11 MR. WALTERS: Your Honor, I would like to also point  
12 out that the other claim involving the Rivers and Harbors Act  
13 we do have as a matter of law and I think fact specific in the  
14 motion to dismiss that the State is not a proper object of  
15 injunctive relief enforcement for the statute, so there are  
16 both issues that are pure matters of law that could be disposed  
17 of that are briefed in our motion to dismiss.

18 THE COURT: Okay, well, I will get those decisions out  
19 as quickly as possible, probably right around the time we go to  
20 trial. I'll get them out. Don't worry. Get ready for trial.  
21 Okay? There will be a trial.

22 COURTROOM DEPUTY CLERK: Discovery deadline.

23 THE COURT: So I want disclosure of experts within  
24 five days, both sides. You already know who your experts are,  
25 I think, don't you? No? Okay. Well, you had some in the last

1 go-around. What happened to them?

2 MR. WALTERS: I don't believe we had experts in the  
3 first go-around, we had fact witnesses.

4 THE COURT: You had some fact witnesses. I'll try to  
5 get to the motion to dismiss sooner rather than later. And  
6 then you'll need to file your answer immediately thereafter, if  
7 it's necessary.

8 COURTROOM DEPUTY CLERK: Discovery is February 16th.

9 THE COURT: You're giving me the 50-mission stare,  
10 counsel. Yes?

11 MR. BRYANT: Your Honor, I just want to raise a  
12 possibility that the State may choose to assert a counterclaim  
13 when it comes time for that answer, so that hadn't been  
14 decided, that's just one lawyer's idea, and so I just wanted to  
15 make the Court aware of it so that if it does come to pass, it  
16 wouldn't be a surprise.

17 THE COURT: Okay. I don't know what kind of  
18 counterclaim, but if you file one, you file one. They'll just  
19 answer it very quickly and we'll go to trial. There are very  
20 few mysteries in this case, okay, very few. We know what this  
21 case is about and we've got this thing kind of floating around  
22 out there. I don't think the governor has made any effort to  
23 put any more in the water. Has he?

24 MR. WALTERS: No, Your Honor.

25 THE COURT: And people are walking around this thing,

1 the Fifth Circuit who would say, *Let's take another look at*  
2 *this, maybe Judge Willett is right.* Is that a surprise? It  
3 wasn't a surprise to me. I'm sure it wasn't even a surprise to  
4 the United States. They argued against it, but unsuccessfully.  
5 Okay.

6 MR. WALTERS: Your Honor, if I could just one request  
7 procedurally.

8 THE COURT: Sure.

9 MR. WALTERS: We would propose that the plaintiff  
10 disclose their experts and witnesses first to give us an  
11 opportunity to then respond.

12 THE COURT: That's why I told them within five days.

13 MR. WALTERS: So it's just for the plaintiff, Your  
14 Honor?

15 THE COURT: Yes, of course. Yes?

16 MS. KIMBALL: Are there further deadlines that the  
17 Court is setting?

18 THE COURT: Yes, we're going to give you those now.

19 COURTROOM DEPUTY CLERK: Discovery, February 16th.

20 MS. KIMBALL: Is that fact discovery closing or all  
21 discovery?

22 THE COURT: These experts need to write their reports,  
23 which I think they need to understand they've got a deadline  
24 here, so I think general fact discovery, February 16th. I know  
25 it sounds like, gee wiz, that's only like a month away, little

1 less than a month away, but you have to remember that a lot of  
2 this has already been done. This has already been done, so  
3 this is round two, so to speak, not round one. And then for  
4 your expert discovery for depositions for the experts, I would  
5 say the end of February.

6 MS. KIMBALL: So, Your Honor, that's the close of  
7 expert discovery?

8 THE COURT: Yes, the reports have to be written and  
9 turned in and expert discovery has to be completed by the end  
10 of February.

11 COURTROOM DEPUTY CLERK: February 29th.

12 THE COURT: So those expert reports should be in a  
13 week ahead of that.

14 COURTROOM DEPUTY CLERK: February 22nd.

15 THE COURT: I'll give you until February 29th to turn  
16 in -- when is the trial?

17 COURTROOM DEPUTY CLERK: March 19th.

18 THE COURT: What is March 5th?

19 COURTROOM DEPUTY CLERK: March 5th is a Tuesday.

20 THE COURT: I'll give you until March 5th to turn in  
21 your proposed findings of fact and conclusions of law.

22 COURTROOM DEPUTY CLERK: Pretrial submissions will be  
23 March 11th, and objections to pretrial submissions will be  
24 March 13th.

25 THE COURT: I'm going to try to get my ruling on the



1 Hidalgo issue. And what was the other issue? There was one  
2 other issue.

3 MR. WALTERS: The other purely legal question in there  
4 is whether there's a cause of action against the State of Texas  
5 under the Rivers and Harbors Act, Your Honor.

6 THE COURT: Okay. I think the Supreme Court has  
7 already kind of addressed that, but all right. I think there's  
8 some Supreme Court law on that issue. Anything else?

9 COURTROOM DEPUTY CLERK: I set it for the four days.

10 THE COURT: And we've set it for four days, trial for  
11 four days. If it takes a little longer, it takes a little  
12 longer. I spend 99 percent of my time here now. Judge Yeakel  
13 retired on us, so it's just Judge Pitman and me, so I'll be  
14 here. Anything else?

15 MR. WALTERS: I think we've said our peace, Your  
16 Honor.

17 THE COURT: You said your peace? No, you haven't.  
18 You're going to have plenty of opportunity to say it. Look, I  
19 have a great deal of respect for the United States Attorney's  
20 Office and Department of Justice, but I should have it be known  
21 that I have a great deal of respect for the State Attorney  
22 General's Office. They have presented some very fine  
23 presentations and won cases in my court on more than one  
24 occasion over the last 12 years, so I have no -- I think I'm  
25 very fortunate in this case to have good lawyers on both sides.

1 This is not one of those cases where I'm going, *Oh, my God*. So  
2 thank you very much and you'll be hearing from me soon on those  
3 motions and then you can file your answer. And I'd like your  
4 answer to be filed very quickly and any counterclaim very  
5 quickly. Okay? Don't sit on it if you're going to file one.  
6 Anything else? No? No?

7 MS. KIMBALL: No, Your Honor. Thank you.

8 COURT SECURITY OFFICER: All rise.

9 (12:00 p.m.)

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date signed: January 21, 2024

/s/ Angela M. Hailey

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